

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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AMOS WINBUSH III and TIFFANY WINBUSH, individually  
and on behalf of their minor children, K.W. and S.J.W.,

23-cv-01320 (JHR)

Plaintiffs,

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION;  
BOARD OF EDUCATION OF THE CITY SCHOOL  
DISTRICT OF THE CITY OF NEW YORK; NEW YORK  
CITY COMMUNITY SCHOOL DISTRICT 2; MAGGIE  
SIENA, Principal of Peck Slip School (in her individual  
capacity); CASEY COREY, Assistant Principal of Peck Slip  
School (in her individual capacity),

Defendants.

**NOTICE OF**  
**DEFENDANTS' MOTION**  
**TO DISMISS PURSUANT**  
**TO FED. R. CIV. P. 12(b)(1)**  
**and 12(b)(6)**

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**PLEASE TAKE NOTICE** that upon the accompanying Memorandum of Law in Support of their Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), dated May 9, 2023, Defendants the New York City Department of Education, Board of Education of the City of New York, New York City Community School District 2 (together, the "Municipal Defendants"), Maggie Siena, and Casey Corey (together, the "Individual Defendants"), by their attorney, the Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, will move this Court before the Honorable Jennifer H. Rearden of the United States District Court for the Southern District of New York, located at 500 Pearl Street, New York, New York 10007, on a date and at a time to be designated by the Court, for an Order to dismiss or limit Plaintiffs' claims and recovery, and grant Defendants such other and further relief as the Court deems just and proper.

Defendants' Motion to Dismiss should be granted. First, Plaintiffs fail to sufficiently allege racial discrimination claims under either Title VI or the Equal Protection Clause of the Fourteenth

Amendment for their younger child, S.J.W. Second, Plaintiffs' claims regarding their older child, K.W., prior to the 2019-20 school year are time-barred because Plaintiffs fail to assert a continuing violation. Third, Plaintiffs have not sufficiently alleged a *Monell* claim against the Municipal Defendants because they fail to make a causal connection between a municipal policy or custom and their constitutional claims, and because their statements of supposed policy are mere conclusory allegations.<sup>1</sup> Fourth, Plaintiffs' claims for injunctive and declaratory relief will become moot as of June 27, 2023, and the Court should dismiss these claims as of that date for lack of subject matter jurisdiction. Finally, Defendants move to bar Plaintiffs from asserting compensatory damages for emotional distress for their Title VI claims to the extent that they survive this motion.

Accordingly, Plaintiffs' claims and recovery as laid out in the Complaint should be dismissed or limited as detailed in Defendants' Motion to Dismiss.

Dated: New York, New York  
May 9, 2023

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By: /s/ John Treat  
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Kendra Elise Riddleberger  
Assistant Corporation Counsel

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<sup>1</sup> In the alternative, Defendants request a stay of discovery on Plaintiffs' *Monell* claims until the completion of discovery as to any underlying violation.